

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

JENNIFER MITCHELL

Claimant

VS.

PRESBYTERIAN MANORS, INC.

Respondent

Self-Insured

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Docket No. 222,860

ORDER

Respondent requested review of the preliminary hearing Order dated August 26, 1997, entered by Administrative Law Judge Floyd V. Palmer.

ISSUES

The Administrative Law Judge granted claimant's request for psychiatric treatment. Respondent requested the Appeals Board to review the issues of timely written claim and whether claimant's psychological problems are directly traceable to the work-related accident.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, for purposes of preliminary hearing the Appeals Board finds as follows:

The preliminary hearing Order should be affirmed.

The Appeals Board has the authority and jurisdiction to review the issue whether claimant served timely written claim upon respondent. However, at this juncture of the proceeding the Appeals Board lacks the authority to reweigh the evidence to determine whether claimant's psychological problems are traceable to the work-related accident. On previous occasions, the Appeals Board has determined the latter issue is more of a

question of nature and extent of injury rather than one of the enumerated jurisdictional issues set forth in K.S.A. 44-534a, as amended, which governs preliminary hearing appeals.

The Appeals Board finds claimant provided timely written claim as required by K.S.A. 44-520a and K.S.A. 44-557. Because respondent did not timely file a report of accident with the Division of Workers Compensation as required by K.S.A. 44-557, the period for providing written claim was extended to one year from the date of accident or last payment of compensation.

Claimant was beaten and injured by a coworker on June 22, 1996. Despite immediate knowledge of the incident, respondent did not file the required accident report with the Division of Workers Compensation until July 22, 1996, which was beyond the required 28 days. Claimant filed an Application for Hearing, Form E-1, with the Division of Workers Compensation on May 5, 1997. The Kansas Supreme Court has previously held the filing of an application for hearing satisfies the requirement of written claim. See Craig v. Electrolux Corporation, 212 Kan. 75, 82, 510 P.2d 138 (1973) and Magers v. Martin Marietta Corporation, 193 Kan. 137, 392 P.2d 148 (1964).

In Childress v. Childress Painting Co., 226 Kan. 251, 597 P.2d 637 (1979), the Kansas Supreme Court stated:

When an accident report is *not* filed by the employer within 28 days of the date of the accident or within 28 days after the employer has knowledge of the accident, as required by K.S.A. 1978 Supp. 44-557(a), then (1) the claimant must commence the proceeding before the director by serving a written claim for compensation on the employer within one year of the date of the accident, and (2) there must be on file, in the office of the director, an application for a hearing, within three years of the date on which the employer files with the director a report of the accident.

Respondent and its insurance carrier argue that the above quote is merely dicta and was unnecessary to determine the issues before the Court in Childress. Although that contention may or may not be true, the Appeals Board is reluctant to ignore a Kansas Supreme Court bright line rule upon which parties have relied since 1979 and which the Kansas Legislature has not seen fit to change.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order dated August 26, 1997, entered by Administrative Law Judge Floyd V. Palmer should be, and hereby is, affirmed.

IT IS SO ORDERED.

Dated this ____ day of October 1997.

BOARD MEMBER

c: James C. Wright, Topeka, KS
Kasey Alan Rogg, Wichita, KS
Floyd V. Palmer, Administrative Law Judge
Philip S. Harness, Director